

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**BECKLEY DIVISION**

BRIAN L. BROWN,

Petitioner,

v.

CIVIL ACTION NO. 5:12-cv-01178

JOEL ZEIGLER,

Respondent.

**MEMORANDUM OPINION AND ORDER**

The Court has reviewed the *Defendant's Motion to Dismiss or in the Alternative Motion for Summary Judgment* (Document 14). By *Standing Order* (Document 4) entered on April 17, 2012, this action was referred to the Honorable R. Clarke VanDervort, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636.

On February 4, 2013, the Magistrate Judge submitted a *Proposed Findings and Recommendation* (Document 52) wherein it is recommended that this Court grant the *Defendant's Motion to Dismiss or in the Alternative Motion for Summary Judgment* (Document 14) and dismiss and remove this matter from the Court's docket. Objections to the Magistrate Judge's *Proposed Findings and Recommendation* were due by February 22, 2013. On February 15, 2013, the docket reflects that the *Proposed Findings and Recommendation* mailed to the Petitioner was

returned as undeliverable, and re-mailed on that date. No objections to the *Proposed Findings and Recommendation* have been filed as of March 5, 2013.

The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and the Petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984).

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the *Proposed Findings and Recommendation*, and **ORDERS** that the *Defendant's Motion to Dismiss or in the Alternative Motion for Summary Judgment* (Document 14) is **GRANTED**, and that this matter be **DISMISSED** and **REMOVED** from the Court's docket.

It is further **ORDERED** that any motions pending at the time of this dismissal are hereby **TERMINATED AS MOOT**.

The Court has additionally considered whether to grant a certificate of appealability. See 28 U.S.C. § 2253(c). A certificate will not be granted unless there is "a substantial showing of the denial of a constitutional right." Id. § 2253(c)(2). The standard is satisfied only upon a showing that reasonable jurists would find that any assessment of the constitutional claims by this Court is debatable or wrong and that any dispositive procedural ruling is likewise debatable. Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683-84 (4th Cir. 2001). The Court concludes that the governing standard is not satisfied in this instance. Accordingly, the Court **DENIES** a certificate of appealability.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge VanDervort, counsel of record, and any unrepresented party.

ENTER: March 5, 2013



IRENE C. BERGER  
UNITED STATES DISTRICT JUDGE  
SOUTHERN DISTRICT OF WEST VIRGINIA